

EXHIBIT A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

December 6, 2018

VIA E-MAIL

U.S. Department of Labor
Office of the Secretary
200 Constitution Avenue, N.W.
Washington, DC 20210
Email: foiarequests@dol.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

To better understand how the U.S. Department of Labor (USDOL) implemented its Payroll Audit Independent Determination Pilot Program (PAID Program), the Office of the Attorney General of the State of New York (NYAG) makes the following request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*

Instructions. Unless otherwise stated in a specific request, the date range of this request is for records in the custody, control, or possession of the USDOL, and all subdivisions thereof, between March 1, 2018, to the date the search is conducted.

Because this request seeks responsive records from a number of different components of the Department, we request that your response be coordinated by the Office of Information Services in the Office of the Solicitor. *See* 29 C.F.R. § 70.20(a).

Under the FOIA Improvement Act of 2016, agencies are required to adopt a presumption of openness, withholding information only if "disclosure is prohibited by law" or "disclosure would harm an interest protected by a FOIA exemption." 29 C.F.R. § 70.1(d); *see also* 29 C.F.R. § 70.3. If it is your position that any portion of the requested records is exempt from disclosure notwithstanding this mandatory presumption of openness, we request that you provide an index of those records as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, the Vaughn index should describe each document claimed as exempt with sufficient

specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology of Washington, D.C. v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

We hereby request any and all records that reflect the following information:

1. All records regarding employers who have participated in the PAID Program, including:
 - a. All Certificates of Completion of Compliance Assistance Review, including name and business name;
 - b. All records and materials submitted to USDOL by employers contacting USDOL about participating in the PAID Program (“PAID Applicants”), including:
 - i. Business name, name of person submitting materials, address, phone number, and email address for all PAID Applicants;
 - ii. Names, addresses, and phone numbers of all affected employees;
 - iii. Back wage calculations along with supporting evidence and methodology used to make those calculations;
 - iv. Payroll records and any other evidence submitted by PAID Applicants to USDOL;
 - v. Records demonstrating hours of work of each affected employee during the time frame at issue;
 - vi. Records submitted to show that the employers have corrected the compensation practices to comply with the Fair Labor Standards Act;
 - vii. Explanations of the scope of the potential violations for possible inclusion in a release of liability;
 - viii. Certifications that the employer reviewed the PAID program’s information, terms, and compliance assistance materials;
 - ix. Certifications that the employer meets the eligibility criteria of the PAID program;
 - x. Proof of payment of unpaid wages; and
 - xi. Any audit or self-audit records submitted to USDOL;
 - c. All USDOL reviews of submissions by PAID Applicants including analyses, reports, calculations, memoranda and other documents summarizing, analyzing, or reviewing submissions by PAID Applicants;
 - d. All communications between USDOL and PAID Applicants, including:
 - i. Requests by USDOL to PAID Applicants for additional information;
 - ii. Notification by USDOL to PAID Applicants of acceptance into PAID program;
 - iii. Proposed scope of the employee release of claims sent by USDOL to PAID Applicant;
 - iv. Summary of unpaid wages issued by USDOL;

- v. Forms describing settlement terms issued by USDOL, including signed forms; and
 - vi. Proof of payment;
- e. All communications between USDOL and employees receiving back wages under the PAID Program, including:
 - i. Forms describing settlement terms for employee, including signed forms; and
 - ii. Any other communications between USDOL and such employees.
- 2. All records, dated April 11, 2018, to the date the search is conducted, reflecting any meetings, internal or external, concerning the PAID Program, including without limitation the following:
 - a. meeting agendas and lists of attendees;
 - b. communications sent in preparation for or following any such meetings; and
 - c. calendar entries. For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar used to track or coordinate how these individuals allocate their time on agency business.
- 3. All records, dated April 11, 2018, to the date the search is conducted, of written or oral communications, internal or external, concerning the PAID Program, including without limitation any communications with or by any employer, business association, trade group, non-governmental person or entity, or any member of Congress or their staff.
- 4. All records, dated April 11, 2018, to the date the search is conducted, including emails, calendars, memoranda, analyses, or reports reflecting meetings or communications with, or records created by, any member of the USDOL’s Chief Evaluation Office concerning the development, implementation, consideration, or evaluation of the PAID Program.

Your search for responsive records for Item 1 should include the Wage and Hour Division, and for Items 2, 3, and 4 should include the Office of the Secretary, the Office of the Assistant Secretary for Policy, the Office of the Solicitor, the Wage and Hour Division, the Office of Congressional and Intergovernmental Affairs, and the Executive Secretariat.

Fee Waiver Request. We request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 29 C.F.R. § 70.41(a)(1). Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. The PAID Program has been the subject of extensive public attention since Secretary Acosta announced it on March 6, 2018, and the Department has publicly characterized the program as benefiting workers, employers, and taxpayers.¹ Disclosure of the requested

¹ Bryan Jarrett, *Dept. of Labor’s new PAID program a win-win-win for employers, taxpayers, employees*, The Hill, March 6, 2018, available at <http://thehill.com/opinion/white-house/376886-dept-of-labors-new-paid-program-a-win-win-for-employers-taxpayers>.

records will contribute to the public's understanding of this enforcement program, including whether it benefits workers and employers alike, as the Department has asserted.

In addition, this request is for non-commercial purposes. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 29 C.F.R. § 70.41(a)(1)(ii). The Office of the New York State Attorney General is a law enforcement agency with no commercial interest in the requested information. The Office of the Attorney General anticipates making records obtained from this request available to the public at no cost.

If this request for a fee waiver is denied, please contact us before incurring any costs in responding to this request. We request that your responses be fulfilled electronically. Thank you for your attention to this matter. If you have any questions or wish to clarify any request, please do not hesitate to contact Assistant Attorney General Kevin Lynch at Kevin.Lynch@ag.ny.gov or 212-416-6081. We look forward to receiving your response to these requests within twenty business days, as required by FOIA.

Respectfully,

/s/ Kevin M. Lynch
Kevin M. Lynch, Assistant Attorney General
Labor Bureau
New York State Office of the Attorney General
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New York, NY 10005
(212) 416-6081